

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3363 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
SHARDA CINEMA

Versus

COLLECTOR CUM DIST MAGISTRATE  
-----

Appearance:

MR SR SHAH for Petitioners

MR KG SHETH, AGP, for Respondent No. 1, 2, 3  
-----

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/08/2000

ORAL JUDGEMENT

1. This petition has been filed by the petitioner above named under the provisions as contained in Articles 14, 29 and 226 of the Constitution of India read with the provisions contained in the Bombay Cinema Regulations Act, 1953 and Bombay Cinema Rules, 1954.

2. The first petitioner is a firm and is engaged in running the cinema exhibiting the cinematographic films in his cinema theatre situated at Jam Khambhalia in Jam Khambhalia Taluka of District Jamnagar. The second petitioner is the partner of the first petitioner.

3. It appears that the Deputy Collector and Sub-Divisional Magistrate of the Sub-Division inspected the cinema house of the petitioner on 11-6-1990 at 9-30 p.m.. Some proceedings were undertaken and thereafter the Deputy Collector and the Sub-Divisional Magistrate found that at the time of the aforesaid inspection on 11-6-1990 it was noticed that, in all, 90 spectators were found in excess of the maximum capacity of the said theatre. He also found that the account of the tickets issued was not properly recorded by the petitioners. On the aforesaid defects, a show cause notice was issued by the District Magistrate, Jamnagar on 28th June, 1990, which is placed at annexure 'A'. The petitioners were required to remain present with documentary and oral evidence on 23rd July, 1990 at 11 o'clock.

4. Thereafter, the first respondent undertook some process and thereafter, passed an order on 6th November, 1990. The first respondent found the petitioners guilty of the aforesaid charge and consequently found that the petitioners have committed violation of the provisions contained in Rule 123 of the Bombay Cinema Rules, 1954. Therefore, his licence was ordered to be suspended for a period of one week from 2-12-1990 to 8-12-1990.

5. In the meantime, it was clarified that the petitioners were at liberty to prefer an appeal before the Deputy Secretary of the State Government on or before 1st December, 1990. In the meantime, the petitioners had submitted written explanation before the first respondent on 16-7-1990. The same can be found at annexure 'C' to the petition.

6. The petitioners thereafter preferred an appeal before the State Government in Information Department where the petitioners were heard and orders were passed on 30-3-1991, the same can be found at annexure 'B' to the petition. The State Government dismissed the said appeal of the petitioners and confirmed the orders passed by the first respondent.

7. Having aggrieved by the said orders of the second respondent, the petitioners have preferred this petition before this Court. It has been mainly contended here

that the inspection was carried out by the Deputy Collector and Sub-Divisional Magistrate who had no authority to inspect the theatre of the petitioners and therefore, there is basic legal defect committed by the Deputy Collector and Sub-Divisional Magistrate. It has also been contended that he had absolutely no powers or jurisdiction to inspect the said theatre and the proceedings undertaken by him cannot be treated to be legal and valid. It has also been contended on behalf of the petitioners that in the written explanation, the petitioners had requested that an opportunity may be given to them to cross-examine the Deputy Collector and Sub-Divisional Magistrate in order to throw light on the proceedings undertaken by him and in order to show that whatever done by him was not correct. It has also been contended that it was not physically possible to accommodate those excess persons in the theatre as there is no space for allowing them to sit in the theatre. That no panchnama was drawn on the spot and, therefore, it has been contended that the orders passed by the first respondent as well as the Government are without application of mind and without any material evidence before them, and therefore, they are required to be quashed and set aside. It is also contended by the petitioners that the aforesaid orders have been passed without giving reasonable opportunity to the petitioners of being heard and also contended that as contended in the written explanation though request was made to permit the petitioners to cross-examine the Deputy Collector and the Sub-Divisional Magistrate, the said opportunity was not afforded to the petitioners and, therefore, there is a clear case of violation of principles of natural justice. On the aforesaid consideration, the petitioners have prayed that an appropriate writ, order or direction be issued quashing and setting aside the impugned orders passed by the respondent referred to hereinabove. They have also prayed to quash and set aside the show cause notice issued by the first respondent on the basis of the report of the Sub-Divisional Magistrate as aforesaid.

8. Notice was issued at the first instance. Thereafter, Rule was issued on 2-7-1991. Mr. K.G. Sheth, learned AGP appears for the respondents. I have heard the learned advocates for the parties and perused the papers.

9. The facts are not very much in dispute. The petitioners are running their cinema at Jam Khambhalia in Jamnagar District and the Sub-Divisional Magistrate and Deputy Collector had visited the said cinema at 9-30 p.m. on 11-6-1990. The rojkam was prepared at 10-30 p.m..

Now, according to the case of the Deputy Collector and the Sub-Judicial Magistrate, spectators were found excess in number than what was the capacity of the petitioner-cinema. The number of those excess spectators is shown to be 90 in all. It appears that as per the say of the Deputy Collector-cum-Sub-Divisional Magistrate, 12 spectators were found in excess in balcony, 05 in first class and 73 in second class. So the excess number, in all, was 90. He also found that the account of the tickets was not properly maintained.

10. Thereafter, the show cause notice was issued which has been placed at annexure 'A'. It also contains the said allegations. Then by annexure 'B' orders were passed by the first respondent holding the petitioners guilty for the aforesaid irregularities. An order was passed suspending the licence of the petitioners for a period of a week. The order was carried to the Government in appeal and there also, the petitioners failed. These facts are undisputed.

11. It has been contended on behalf of the petitioners that there was a specific plea in the written explanation of the petitioners placed at annexure 'C' that he may be permitted to cross-examine the Deputy Collector and Sub-Divisional Magistrate. This can be gathered from para-10 of the said written explanation. It is the contention of the learned advocate for the petitioners that that request was not allowed and the petitioners were not permitted to cross-examine the aforesaid Deputy Collector and Sub-Divisional Magistrate. It is his argument that by cross-examining the said witness, the petitioners could have brought on record the real facts. That in fact, it is not possible to accommodate more persons in the said theatre and this fact could be brought on record only by cross-examining the said witness. That, therefore, the said aspect was material and important for the purpose of just decision in the aforesaid matter and, therefore, it was absolutely necessary for the petitioners to cross-examine the said witness and, hence, it was necessary for the first respondent to permit the petitioners to cross-examine the Deputy Collector and Sub-Divisional Magistrate. That, therefore, it was a valuable right of the petitioners to cross-examine the said witness and the said right has been denied by the first respondent without any reasonable excuse.

12. The first respondent has passed the orders placed at annexure 'B'. There we find that there is no reference to the above contention of the petitioners.

This shows that the said prayer of the petitioners contained in writing in the said written explanation has been totally overlooked by the first respondent while passing the aforesaid orders against the petitioners.

13. On this aspect of the case, learned advocate for the petitioners has relied upon the decision recorded in the case of K.L. Tripathi vs. State Bank of India reported in AIR 1984 SC 273. There it has been observed in paras-32 and 33 that if the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who is testified is, in dispute, right of cross-examination must inevitably form part of fair play in action.

14. Here the factual aspects were disputed and, therefore, the said prayer was made for permitting the petitioners to cross-examine the Deputy Collector and Sub-Divisional Magistrate. On one hand, the petitioners have not been permitted to cross-examine the said Officer, on the other hand, no explanation has been given for not permitting the petitioners to cross-examine the said Officer. If the first respondent had a power to permit the petitioners to cross-examine the said Officer he had certainly powers to refuse the said permission also but he could have assigned reasons for not doing so. The orders passed by him are silent on this aspect of the case. It is, therefore, not clear as to why the said permission was not granted by the first respondent to the petitioners for cross-examining the Deputy Collector-cum-Sub-Divisional Magistrate. Therefore, it is a case of ex-facie violation of principles of natural justice. It is more so when the factual aspects are in dispute and they are contested before the two authorities.

15. Even before the State Government, the said issue has not been dealt with. The State Government has not justified the said action of the first respondent in the orders in question. This shows that neither the first respondent nor the State Government has considered the aforesaid aspect objectively and in proper perspective. In the aforesaid view of the matter, the orders passed by the first respondent as well as by the State Government suffer from the aforesaid infirmity and there is a breach of principles of natural justice.

16. All the three respondents are 'State' within the meaning of Article 12 of the Constitution of India and, therefore, the fair play is always expected from them. They are required to afford reasonable opportunity before

passing the orders and even in quasi-judicial capacity reasonable opportunity is required to be given and fair play cannot be overlooked or left out. The principles of natural justice are required to be followed by them. Since this has not been done in this matter, I am of the view that the petition must succeed on this narrow aspect also.

17. Another aspect of the case is that as per the arguments advanced on behalf of the petitioners, the Sub-Divisional Magistrate and Deputy Collector had no authority to visit or inspect the cinema theatre under Rule 124. The first respondent has observed that the Deputy Collector had authority and jurisdiction to do so but no provision of law or Rule has been cited. This is not proper. When the authority is required to decide the power and jurisdiction of an Officer and when the power and jurisdiction of that Officer has been challenged then it would be necessary for such an authority to decide the issue and while deciding the issue, the authority must refer to the provision of Rule of law or even the resolutions, the base of which can be treated to be a basis for arriving at a decisions that the said Officer had authority to act in a particular manner. In the present case, the authority to inspect the theatre has been challenged and the first respondent has not made it clear as to the provision under which the Deputy Collector and Sub-Divisional Magistrate had power, authority or jurisdiction to inspect the cinema of the petitioners. It would be open to the petitioners to take this issue before the first respondent again and the first respondent will be at liberty to decide the said issue again by referring to law, regulations, rules or Government resolutions applicable in this matter. In the aforesaid view of the matter, I am of the view that when the orders have been passed by a quasi-judicial authority in violation of principles of natural justice, the petitioners must succeed in the present petition and, therefore, the aforesaid orders of the respondents are required to be quashed and set aside. However, the respondents will be at liberty to take up the inquiry afresh and pass appropriate orders after following the procedure and after affording a reasonable opportunity of being heard to the petitioners.

18. Learned advocate for the petitioners also submits that the licence of the petitioners was suspended for one week and that period has gone but in view of the legal position, the respondents can issue fresh notice for suspension of licence for a period of one week which may commence on a given date even though the period in notice

in dispute has already passed.

19. In the aforesaid view of the matter, the present petition succeeds and, therefore, the present petition is allowed and the orders passed by the respondents and placed at annexure 'B' and 'D' dated 15th November, 1990 and 30th March, 1991 respectively are quashed and set aside and the respondents are prevented from implementing the said orders against the petitioners.

20. At the same time, it is clarified that the respondents shall be at liberty to issue fresh show cause notice to the petitioners and shall be at liberty to pass appropriate orders after following due process of law and after affording a reasonable opportunity of being heard to the petitioners. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

\*\*\*\*\*

zgs/-